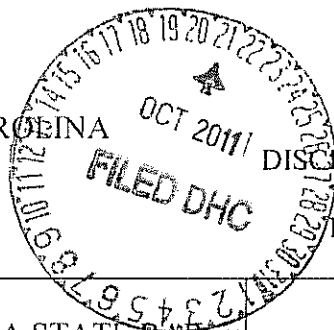


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
11 DHC 30

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CREIGHTON W. SOSSOMON, Attorney,

Defendant

AMENDED COMPLAINT

Plaintiff, pursuant to Rule 15(a) of the Rules of Civil Procedure, hereby amends as a matter of course the Complaint filed on 20 October 2011 to include two additional claims for relief (the Fourth and Fifth Claims for Relief below).

1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Creighton W. Sossomon (hereafter "Defendant" or "Sossomon"), was admitted to the North Carolina State Bar on 15 August 1969 and is an Attorney at Law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant period referred to herein, Sossomon was actively engaged in the practice of law in Highlands, Macon County, North Carolina.

#### FIRST CLAIM FOR RELIEF

4. Paragraphs 1 through 4 are re-alleged and fully incorporated as if set forth herein.

5. Sossomon represented Gregory Bader in a construction contract dispute, *Timberwood Development Corp. v. Gregory Bader*, Cherokee County file no 03-CVD-47, ("the Timberwood lawsuit").

6. On 7 April 2006, counsel for Timberwood served a motion for summary judgment on Sossomon. Sossomon did not inform Bader that a dispositive motion had been filed.

7. On or about 11 August 2006, counsel for Timberwood served Sossomon with affidavits in support of Timberwood's motion for summary judgment. Sossomon did not tell Bader about the affidavits or provide them to Bader.

8. Throughout 2006, Sossomon failed to respond to periodic requests from Bader for information about the status of the Timberwood lawsuit.

9. The Timberwood lawsuit was set for hearing on 12 February 2007.

10. Sossomon advised Bader of the trial setting by email on 6 February 2007. This was his first communication with his client since 7 October 2005.

11. On 8 February 2007, Sossomon told Bader that the trial had been postponed but there were some "preliminary matters" that were going to be heard and an affidavit from Bader was required.

12. Sossomon provided Bader with a proposed affidavit and Bader immediately responded, telling Sossomon that the proposed affidavit contained errors. Sossomon emailed a corrected affidavit to Bader, who printed and executed the revised affidavit and faxed and mailed the executed affidavit to Sossomon on 10 February 2007.

13. On 12 February 2007, Sossomon appeared in court with an un-signed version of Bader's affidavit. The hearing on summary judgment was continued for three weeks and Sossomon was given eleven days to secure and serve the executed affidavit. Sossomon did not serve opposing counsel with the affidavit Bader had executed, nor did he contact Bader to request that he send another executed affidavit.

14. Sossomon offered no evidence in opposition to Timberwood's motion. On 31 May 2007, the Court entered an order granting summary judgment on the issue of liability and reserving the issue of damages to be determined after a hearing. Sossomon did not inform Bader that partial summary judgment had been entered against him.

15. On 14 August 2007, the remaining issue of damages was resolved by bench trial after Sossomon represented to the court that his client agreed to waive his demand for a jury trial. Bader was unaware of, and did not consent to, this waiver of his right to jury trial. At the hearing on damages, Sossomon offered no evidence on Bader's behalf beyond cross-examination of Timberwood's witnesses.

16. On 21 August 2007 the court entered judgment against Bader in the amount of \$45,894.28 plus interests and costs. Sossomon did not advise Bader that judgment had been entered against him or of his rights to appeal.

17. On 28 April 2008, Bader emailed Sossomon inquiring about the status of his case. Sossomon did not respond.

18. Sossomon never advised Bader that judgment had been entered against him in the Timberwood lawsuit. Bader learned of the judgment against him through an August 2008 credit check.

19. On 29 August 2008, Bader contacted Sossomon seeking an explanation of what had transpired in the Timberwood lawsuit. Sossomon promised to locate and review the file and provide an explanation to Bader, but failed to do so.

20. Bader subsequently asked Sossomon to provide a copy of his client file. Despite repeated requests from Bader, Sossomon did not produce Bader's file for six months. Sossomon provided the file to Bader only after the North Carolina State Bar contacted Sossomon on Bader's behalf.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By failing to respond to Bader's inquiries and failing to notify Bader of significant developments in the Timberwood lawsuit, Sossomon failed to keep a client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a), and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b);
- (b) By failing to offer Bader's affidavit in opposition to the motion for summary judgment and by failing to offer any evidence on Bader's behalf at either the summary judgment hearing or the hearing on damages, Sossomon failed to act with reasonable diligence on behalf of a client in violation of Rule 1.3;
- (c) By waiving Bader's right to a jury trial without Bader's knowledge or consent, Sossomon failed to consult with his client about the means by which the client's objectives would be pursued in violation of Rule 1.2(a);
- (d) By representing to the court that his client agreed to waive his right to jury trial, Sossomon made a false statement of material fact to the tribunal in violation of Rule 3.3(a); and
- (e) By failing to promptly provide Bader with his client file upon request, Sossomon failed to take steps to the extent reasonably practicable to protect a client's interests upon termination of the representation in violation of Rule 1.16(d).

#### SECOND CLAIM FOR RELIEF

21. Paragraphs 1 through 20 are re-alleged and fully incorporated as if set forth herein.

22. In September 2009, Bader filed a legal malpractice action (*Bader v. Sossomon*, WDNC file no. 2:09-cv-49, hereafter “the malpractice case”) against Sossomon regarding Sossomon’s handling of the Timberwood lawsuit.

23. In June 2010, Bader and Sossomon attended a mediated settlement conference in the malpractice case. They reached a binding settlement agreement in which Sossomon agreed to provide Bader with a promissory note and deed of trust as security for the amount Sossomon agreed to pay Bader pursuant to the settlement.

24. Sossomon subsequently informed Bader’s counsel that he did not intend to comply with the provision of the agreement providing for the promissory note and deed of trust.

25. Bader filed a motion to enforce the settlement. The hearing on the motion to enforce was rescheduled by the court because Sossomon failed to appear at the original hearing date despite receiving notice thereof.

26. At the rescheduled hearing on Bader’s motion to enforce the settlement, Sossomon admitted generally that he had breached the terms of the settlement and specifically that he had breached the terms by failing to seek his wife’s consent to the settlement agreement and failing to ask her to sign the promissory note and deed of trust.

27. In ruling on Bader’s motion to enforce the settlement, the federal court found that by breaching the settlement agreement, Sossomon “failed to act with the integrity commensurate with his oath as an officer of the court and that he acted in bad faith.” The court entered judgment against Sossomon for \$170,000.00.

28. Thereafter, Sossomon filed a motion to amend, set aside, or modify the judgment (hereafter “motion to amend”).

29. In the motion to amend, Sossomon asserted that the terms of the settlement agreement were indefinite and implied that he had been unaware of the term that required him to obtain his spouse’s signature on the note and deed of trust. The court found that by making this argument, which was inconsistent with Sossomon’s prior admissions, Sossomon was being “disingenuous with the court.”

30. The court denied Sossomon’s motion, indicating that it was “unsupported by any objective grounds” and was “simply an attempt to further delay the inevitable.”

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By refusing to comply with a binding settlement agreement, Sossomon engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (b) By filing a motion to set aside that was unsupported by any objective grounds and contained assertions inconsistent with his own prior

admissions, Sossomon asserted an issue without basis in fact or law in violation of Rule 3.1 and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

### THIRD CLAIM FOR RELIEF

31. Paragraphs 1 through 30 are re-alleged and fully incorporated as if set forth herein.

32. In connection with his law practice, Sossomon maintained an attorney trust account at Bank of America (account number ending in 1942).

33. During the period from May 2007 through October 2007, Sossomon withdrew approximately \$82,000.00 from his trust account in the form of cash and/or counter withdrawals.

34. During the period from January 2008 through April 2011, Sossomon:

- (a) Failed to perform monthly or quarterly reconciliations of his trust account; and
- (b) Failed to maintain sufficient funds in his trust account to cover all of the client balances that should have been in the account.

35. Sossomon was the closing lawyer for a 12 June 2007 transaction in which Cornerstone Homes of Highlands, LLC ("Cornerstone") was the seller. After the closing, Sossomon held \$150,000.00 in escrow to be disbursed to Cornerstone when construction on the home was complete.

36. On or about 24 April 2008, Sossomon's trust account was overdrawn by more than \$15,000.00. Sossomon deposited personal funds to cover the shortfall. At that time, Sossomon had disbursed only \$1,577.56 of the money he was supposed to be holding in escrow for Cornerstone. The balance of \$148,422.44 should have remained on deposit in Sossomon's trust account.

37. When the terms of the escrow agreement were satisfied and a representative of Cornerstone asked Sossomon to disburse the escrowed funds, Sossomon said that the money was "not in the trust account" but he would try to cover the shortage with personal funds.

38. On 1 October 2008, Sossomon deposited a \$50,000.00 check from a realtor, which represented the buyer's down-payment for a real estate purchase (this real estate transaction is referred to hereafter as "the Grubbs/Wilding closing"). Sossomon received the down-payment in escrow from the realtor and was supposed to transfer the \$50,000.00 to the buyer's attorney who conducted the closing.

39. Sossomon did not disburse the \$50,000.00 down-payment to the closing attorney for the Grubbs/Wilding closing. Sossomon instead disbursed the \$50,000.00 to Cornerstone without the beneficial owner's knowledge or consent.

40. In June 2009, Sossomon received an additional \$25,000.00 in trust for the benefit of Cornerstone. In September 2009, Sossomon disbursed \$15,000.00 of the money he held in trust for Cornerstone to himself without authorization from Cornerstone.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By withdrawing funds from his attorney trust account in the form of cash, counter withdrawals, and/or certified checks, Sossomon drew items on a trust account made payable to cash or bearer in violation of Rule 1.15-2(i);
- (b) By failing to perform monthly or quarterly reconciliations of his attorney trust account, Sossomon failed to reconcile the account in violation of Rule 1.15-3(d);
- (c) By maintaining insufficient funds in his trust account to cover all of the client balances that should have been in the account, Sossomon repeatedly used clients' entrusted funds for the benefit of someone other than the beneficial owner of the funds in violation of Rule 1.15-2(j);
- (d) By disbursing the \$50,000.00 down-payment he received in connection with the Grubbs/Wilding closing to a third party without the beneficial owner's knowledge or consent, Sossomon used entrusted funds for someone other than the beneficial owner of the funds in violation of Rule 1.15-2(j), engaged in criminal conduct—embezzlement—reflecting adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty in violation of Rule 8.4(c); and
- (e) By misappropriating \$15,000.00 of Cornerstone's entrusted funds for his own use and benefit, Sossomon used entrusted funds for personal benefit in violation of Rule 1.15-2(j), engaged in criminal conduct—embezzlement—reflecting adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and engaged in conduct involving dishonesty in violation of Rule 8.4(c);

#### FOURTH CLAIM FOR RELIEF

41. Paragraphs 1 through 40 are re-alleged and fully incorporated as if set forth herein.

42. Sossomon was the closing lawyer for William Mitchell's May 2010 purchase of property in Highlands. Sossomon received \$100.00 in trust for the title insurance premium on an owner's-only policy for Mitchell's benefit.

43. During the five months following the closing, Mitchell contacted Sossomon's office by phone five times to inquire about the title policy. Only during the

fifth call did Sossomon acknowledge that he hadn't submitted a final opinion or the premium, but he assured Mitchell that he would do so immediately.

44. When Mitchell did not receive the title policy or any further communication from Sossomon, he sent Sossomon a letter in December 2010, again asking Sossomon to attend to the matter of his title insurance. Sossomon did not respond.

45. In a March 2011 letter, Mitchell notified Sossomon that he had retained other counsel to obtain the title policy. Mitchell asked Sossomon to refund the amounts he had paid for the title premium and settlement agent's fees. Sossomon did not respond.

46. Mitchell filed a grievance with the State Bar regarding Sossomon's failure to obtain and/or communicate about the title policy. The grievance was initiated on 24 January 2011 and assigned file #11G0094.

47. Sossomon submitted a response to the Letter of Notice in file #11G0094 on 4 April 2011. On 5 April 2011, the State Bar sent Sossomon a letter posing a number of follow-up questions and asking for documentation to corroborate his response. Sossomon failed to respond.

48. On 2 May 2011, the State Bar sent another letter reminding Sossomon of the outstanding request for information. He failed to respond. Finally, in a 23 May 2011 letter, Sossomon was instructed to respond to the State Bar's requests for information immediately. No response was forthcoming.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §§ 84-28(b)(2) & (b)(3) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By failing to timely obtain the title policy for Mitchell, Sossomon failed to act with reasonable diligence and promptness on behalf of a client in violation of Rule 1.3;
- (b) By failing to respond to numerous inquiries from Mitchell about the title policy, Sossomon failed to respond to a client's reasonable requests for information in violation of Rule 1.4(a); and
- (c) By failing to respond to written inquiries from the State Bar regarding the investigation of grievance #11G0094, Sossomon knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

#### FIFTH CLAIM FOR RELIEF

49. Paragraphs 1 through 48 are re-alleged and fully incorporated as if set forth herein.

50. In the spring of 2006, Kerry Hix hired Sossomon to represent him in defending a construction-related lawsuit (*Middleton & Middleton v. Hix*, Jackson County file no. 04-CVS-693, hereafter “the Middleton case”).

51. When the Middleton case appeared on the trial calendar for January 2007, the plaintiffs voluntarily dismissed the case because they had not yet taken Hix’s deposition.

52. Plaintiffs’ counsel notified Sossomon that they intended to re-file the Middleton case promptly and Sossomon agreed that the plaintiffs could conduct Hix’s deposition on 23 February 2007 at Sossomon’s office.

53. Sossomon did not notify Hix that his deposition had been scheduled until 22 February 2007, the day before the deposition. Hix, who lives out of state, had recently undergone surgery and was unable to appear at Sossomon’s office to be deposed on 23 February 2007.

54. The plaintiffs in the Middleton case filed a motion for sanctions based on Hix’s failure to appear for the deposition. As a result, in July 2007 the court entered a sanctions order striking Hix’s pleadings.

55. Sossomon filed a notice of appeal from the sanctions order but later abandoned the appeal.

56. In October 2008, the court entered judgment of \$120,000.00 plus interest against Hix. Sossomon filed a notice of appeal from the verdict and the sanctions order, but failed to perfect the appeal. Sossomon did not explain to Hix that he was not pursuing an appeal on his behalf.

57. Hix filed a grievance with the State Bar regarding Sossomon’s handling of the Middleton case. The grievance was initiated on 11 May 2011 and assigned file #11G0578.

58. Sossomon submitted a response to the Letter of Notice in file #11G0578 on 10 June 2011. On 16 June 2011, the State Bar sent Sossomon a follow up letter requesting documentation to corroborate his response. Sossomon failed to respond.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §§ 84-28(b)(2) and (b)(3) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By failing to timely notify Hix of his deposition date, failing to perfect Hix’s appeal, and failing to explain to Hix that he was not pursuing an appeal of the Middleton case, Sossomon failed to act with reasonable diligence and promptness on behalf of a client in violation of Rule 1.3, failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a) and failed to explain a matter to the extent



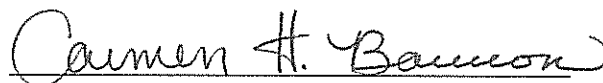
reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b); and

- (b) By failing to respond to a written inquiry from the State Bar regarding the investigation of grievance #11G0578, Sossomon knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

WHEREFORE, Plaintiff prays that

1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. § 84-28 (c) and 27 N.C.A.C. 1B § .0114 as the evidence on hearing may warrant;
2. Defendant be taxed with the administrative fees and with actual costs permitted by law in connection with the proceeding; and
3. For such other and further relief as the Hearing Panel deems appropriate.

This the 21<sup>st</sup> day of October, 2011.

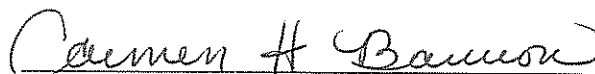
  
Carmen Hoyme Bannon, Deputy Counsel  
The North Carolina State Bar  
P. O. Box 25908  
Raleigh, NC 27611  
(919) 828-4620  
State Bar #33998

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Amended Complaint was served (in conjunction with the 20 October 2011 Complaint and Summons) upon Defendant by delivery to the Macon County Sheriff for personal service at the following address:

CREIGHTON W. SOSSOMON  
601 CENTER DRIVE  
HIGHLANDS, NC 28741

This the 21<sup>st</sup> day of October 2011.

  
Carmen Hoyme Bannon  
*Attorney for Plaintiff*